FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.389 OF 2006

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders

Mr.Ajay Panicker for the petitioners

Mr.S.S.Tatkare, APP for the State.

Coram : R.S.Mohite,J

Date : 8.3.2006.

PC

1. This is a petition impugning an order passed in Criminal Revision Application No.1304/2005 dated 30.12.2005 by which the revision has been dismissed and the order issuing process in 138 proceedings passed by the lower Court has been confirmed. The points which have been agitated in this case is that since the complaint was filed by a power of attorney holder, verification of the complaint through the said power of attorney holder was illegal and no process could have been issued on the basis of verification made by the power of

attorney holder. It is fairly conceded before me that a payee or holder in due course can file a complaint through a power of attorney in view of section 2 of Power of Attornies Act 1882. This is a settled view taken by the Apex Court in the case of **Janki Vashdeo Vs. Indusind Bank Ltd., reported in 2005(1) Mh.L.J, 1170.** Even thereafter this Court in the case of **M/s.G.J.Packaging Private Ltd., Vs. M/s.S.S.Sales reported in 2005 ALL MR (Cri) 2782** has after referring to the aforesaid Apex Court's judgment, held that the complaint under Section 138 of the N.I.Act can be maintained through a holder of power of attorney on behalf of the payee since whatever a person can do himself, he can do through an agent. In the said judgment in paragraph-17 the view of this Court as to whether statement of the power of attorney can be recorded for verification of the complaint is expressed in the following words :-

> "Where a power of attorney has full knowledge of the transaction, his statement can be recorded by the Magistrate for verification of the complaint, for ascertaining the truth of the allegations and to enable him to take a proper decision as to whether the process should be issued or not."

2. Even otherwise, once it is accepted as settled law that power of attorney can file a complaint then it is the power of attorney who becomes the complainant before the Court. Section 202 requires that his statement and the statement of every witnesses present may be recorded by the Magistrate. The word complainant clearly only means the person who has made the complaint in this Court and this can only means the power of attorney holder who has come before the Court on behalf of the payee or holder in due course. In the present case, the power of attorney holder has stated in his verification that he is conversant with the facts of the case. In

such circumstances, the said power of attorney who would also be a competent witness at the trial. The law as to whether a power of attorney holder can act as a witness on behalf of the complainant is also well settled and in fact the Apex Court in the case of Janki Vashdeo (supra) has dealt with this aspect of the matter and accepted the view of Rajasthan High Court in the case of **Shambhu Dutt Shastri Vs.State of Rajasthan reported in 1986 (2) WLL 713** which is to the effect that a attorney holder can appear, plead and act on behalf of the party but he cannot become a witness on behalf of the party. He can only appear in his own capacity. This Court also has taken a similar view in the case of **Dr.Pradeep Mohanbay Vs. Mr.Minguel Carlos Dias reported in 2000(2) ALL MR 664** and held that power of attorney holder cannot give the evidence against the complainant though he could appear as a witness. In this view of the

matter, I am not inclined to interfere with the impugned order and the petition therefore, stands dismissed.

(R.S.Mohite,J)